

**DISTRICT OF COLUMBIA**  
**DOH Office of Adjudication and Hearings**  
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DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

SHERIFF MEWS, L.L.C.  
Respondent

Case No.: I-00-10186  
I-00-10233

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**FINAL ORDER**

**I. Introduction**

This is the third in a series of cases decided today involving the property located at the corner of 50<sup>th</sup> Place and Sheriff Road, N.E. and alleging a violation of 21 DCMR 502.1, which prohibits land disturbing activities without a permit. Unlike the first two cases, it names only Sheriff Mews, L.L.C. (“Sheriff Mews”) as a Respondent. The Government served the first Notice of Infraction (No. 00-10186) on Respondent on May 16, 2000, alleging a violation of §502.1 had occurred or had been determined on May 9, 2000. The Notice of Infraction sought a fine of \$500.00.

Respondent did not answer the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Code §6-2715). Accordingly, on June 15, 2000, this administrative court issued an order finding Respondent in default, assessing a penalty of \$500.00 pursuant to D.C. Code § 6-2704(a)(2)(A)

and requiring the Government to serve a second Notice of Infraction as required by D.C. Code § 6-2712(f).

On June 26, 2000, the Government served the second Notice of Infraction (No. 00-10233). Respondent also did not answer that Notice within twenty days of service. Accordingly, on June 9, 2000, a Final Notice of Default was issued, finding Respondent in default on the second Notice of Infraction and assessing total penalties of \$1,000.00 pursuant to D.C. Code §§6-2704(a)(2)(A) and 6-2704(a)(2)(B). The Final Notice of Default also set September 6, 2000 as the date for an *ex parte* proof hearing, and afforded Respondent an opportunity to appear at the hearing to contest liability, fines, penalties or fees. Enclosed with the Final Notice of Default were copies of both the first and the second Notice of Infraction.

This administrative court held an evidentiary hearing on September 6, 2000. The inspector who issued the Notice of Infraction testified. The Government also had pre-filed five exhibits (Petitioner's Exhibits 200-204) which are admitted into evidence.<sup>1</sup> Respondent did not appear at the hearing.

## **II. Findings of Fact**

Based upon the inspector's testimony, which I find to be credible, the exhibits in evidence and the entire record in this case, I make the following findings:

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<sup>1</sup> The exhibits in this case were filed on August 16, 2000. As described in the orders issued today in the related cases involving this property, I have considered these exhibits in deciding those cases.

1. After discovering violations of 21 DCMR 502.1 at the property in question on December 15, 1999 and March 1, 2000, the Government's inspector conducted a follow-up inspection on May 9, 2000.
2. As of May 9, 2000 no permit had been issued authorizing land disturbing activities at the property.
3. No new land disturbing activities had occurred at the property between March 1, 2000 and May 9, 2000.
4. The Notices of Infraction in this matter were served on Respondent on May 16 and June 26, 2000, as evidenced by the certificate of service signed by the Government's representative. Both Notices were addressed to Respondent at 1345 14<sup>th</sup> Street, N.W., Washington D.C. 20005, an address that the District of Columbia's property tax records list as the mailing address for Sheriff Mews. Petitioner's Exhibit 200.
5. This administrative court's order August 1, 2000 order setting the September 6 hearing date was sent to Respondent by certified mail and by first class mail. The copy sent by first class mail was received delivered to Respondent on August 3, as evidenced by the postal service's delivery confirmation that is contained in the record. The certified mail copy has not been returned to the Clerk's office by the postal service.
6. No explanation has been offered for Respondent's failure to answer the Notices of Infraction.

### III. Conclusions of Law

1. Respondent had adequate notice of the charges as mandated both by the Due Process Clause and by applicable statutes. D.C. Code §§ 1-1509(a); 6-2712(b). Both Notices of Infraction were sent to its address listed in the District of Columbia property tax records for the property at issue. There is a presumption that Respondent received those notices. *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985).
2. Respondent also had adequate notice of the hearing date in this matter. As noted above, there is written confirmation that the August 1 order, which set the hearing date, was delivered to Respondent's address.
3. The evidence fails to establish that Respondent violated 21DCMR 502.1 at any time between March 1 and May 9, 2000. Although no permit was in effect during that period, Respondent did not engage in any land disturbing activities during that time. Even though the effects of the prior land disturbing activities were evident when the inspector visited the property on May 9, §502.1 is violated only when a respondent actually engages in land disturbing activities. Because Respondent did not do so during the period at issue, it did not violate §502.1.<sup>2</sup>

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<sup>2</sup> The Government retains the authority to order a property owner to correct erosion resulting from prior land disturbing activities. 21 DCMR 504.1. The Government is not proceeding under that section in this case, however.

4. Although Respondent is not liable for violating §502.1, it remains liable for statutory penalties in the amount of \$1,000.00 for its failure to answer the Notices of Infraction. D.C. Code §§6-2704(a)(2)(A) and 6-2704(a)(2)(B).
5. Respondent is not liable for hearing costs, which are imposed only upon “adjudication of an infraction adverse to a respondent.” D.C. Code §6-2704(b).
6. The penalties imposed in this order are in addition to the fines, penalties and costs imposed in Cases I-00-10009 and I-00-10120 and Cases I-00-10124 and I-00-10179.

#### IV. Order

Based upon the findings of fact, the conclusions of law and the entire record in this case, it is hereby, this \_\_\_\_\_ day of \_\_\_\_\_, 2000:

**ORDERED**, that Respondent Sheriff Mews, LLC shall cause to be remitted a single payment totaling **ONE THOUSAND DOLLARS (\$1,000.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715). A failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent’s license or permit pursuant to D.C. Code § 6-2713(f).

/s/      **9/8/01**

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John P. Dean  
Administrative Judge